

Butte County Public Law Library

Research Guide – Negotiating a Settlement (Debt)

Scope Note: The purpose of this Packet is to help you negotiate an agreeable settlement with any Bank or Credit Card Issuer – or subsequent Collection Agency that sues you. It is but one approach to responding to a lawsuit. Seek the advice and counsel of an attorney and consider alternate responses if there is anything contained in this Packet that you either do not agree with or do not consent to.

It contains references to 8 Forms

- A Financial Information Worksheet <http://www.courts.ca.gov/documents/ej165.pdf>
- Exemptions from the Enforcement of a Judgment <http://www.courts.ca.gov/documents/ej155.pdf>
- The Current Dollar Amounts of these Exemptions <http://www.courts.ca.gov/documents/ej156.pdf>
- A Stipulation for Settlement and for Deferred Entry of Judgment
- A Request for Dismissal <http://www.courts.ca.gov/documents/civ110.pdf>
- A Notice of Entry of Dismissal and Proof of Service <http://www.courts.ca.gov/documents/civ120.pdf>
- An Answer – Contract <http://www.courts.ca.gov/documents/pldc010.pdf>
- A Proof of Service by First Class Mail <http://www.courts.ca.gov/documents/pos030.pdf>

It informs you of the existence of [Exemptions](#) that will operate to protect part of your property and a part of your earnings from “seizure” or “garnishment”

Thus, it attempts to make known to you and to “the other side” the same information – to enable you to conclude a fair deal with “the other side”

- What’s in it for You:
 - ① The possibility of No Judgment against you; ② Fulfillment of your promise to pay for what you contracted to pay for – to the extent that you can
- What’s in it for The “Bank” (Plaintiff, Collection Agency, etc.):
 - ① Gets actual dollars rather than a paper entitling it to collect future dollars
 - ② Saves costs of collection
- The Goal is Settlement: You agree to pay payments; the Bank/Petitioner/Collection Agency agrees to accept your payments as Payment in Full

Everybody Wins Something

The contents of this packet were prepared for a Debt Clinic held at Legal Services of Northern California, Chico Regional Office, in 2013. The information in this research guide and packet is intended to assist patrons with their legal research and is in no way intended to replace the advice and counsel of an attorney. Butte County Public Law Library does not provide legal advice. Butte County Law Library provides legal resources and assistance with legal research as an educational service.

Sample Facts: (This Could Describe You)

Cottonwood, CA Husband & Wife, each over the age of 65 years, are jointly-sued for failing to make the minimum payments, when due, on a credit card that was issued in both of their names. Husband & Wife incurred the credit card debt as a result of a family emergency that occurred in the home of their Grandchildren. Husband & Wife are retired. Husband & Wife live frugally. Husband & Wife have no other debts, save for the mortgage on their home – which is current. The credit card debt amounts to \$3,000, plus \$300 in accumulated finance charges and late fees, for a total of \$3,300.¹ Husband & Wife are fearful of losing their home. Husband & Wife reside in a mobilehome, valued at \$30,000, which they own subject to the mortgage of \$10,000.² The mobilehome is located in a park where Husband & Wife pay space rent. Together, Husband & Wife own 1 automobile, which has a value of \$1,900.³ Husband & Wife pay their bills, month to month; they have \$500 in savings which was saved-up prior to incurring the credit card debt: The source of their savings was Social Security benefits directly deposited by the US Social Security Administration.⁴ Combined, Husband and Wife receive \$2,844 a month from Social Security.⁵ Husband is a naturalized US citizen. (Wife was born here.) In Husband's country of origin, China, people are (*or were*) imprisoned for debt. Husband and Wife want to negotiate a settlement with the Bank.

Your case is a civil case, not criminal. If it were a criminal case, the Plaintiff would be *The People of the State of California*; because your case is not criminal, there is no threat of imprisonment or jail. The only threat to you is the Plaintiff getting money from you.

¹ The accumulated finance charges and late fees were all computed in accordance with the Provisions for Finance Charges and Late Fees contained in the Cardmember Agreement.

² A mobilehome is entitled to a Homestead Exemption but the Debtor **must** take affirmative steps to properly claim the exemption. (i.e., file a Claim of Exemption within 10 days.) The affirmative steps are given in Code of Civil Procedure sections 703.510-703.610

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=ccp&group=00001-01000&file=703.510-703.610>

³ Equity of up to \$3,050 in one motor vehicle or in an aggregate of motor vehicles is exempt from levy. The Exemption amounts were increased in April 2016

⁴ [Code of Civil Procedure § 704.080](#) provides-for the exemption amounts contained in the Footnote below, as adjusted every three years

⁵ \$3,200 is exempt when only one person is a designated payee of Social Security benefits; \$4,800 is exempt without making a claim when an account receives deposits from two or more designated payees of Social Security benefits.

Goal: Stipulation for Settlement and Deferred Entry of Judgment

→ Society's "exemptions" (that are referred-to throughout this paper) have nothing to do with the "rightness" of repaying a legitimate debt that you owe – if you can, *or to paying it to the extent that you can*. What Society's exemptions do provide are *protections* – so that people who owe money are not faced with what people who owe



money had to face in Dickens's England!

A mid-Victorian depiction of the debtors' prison at [St Briavels Castle](#).

The Bank/Plaintiff/Collection Agency *is* interested in settling with you; The Bank/Plaintiff/Collection Agency is *especially interested in negotiating settlement terms* with you that would be *very favorable to you* – if it cannot by law take anything from you! If you settle with the Bank/Plaintiff/Collection Agency, and honor your settlement agreement, no *judgment* will appear on your Credit Report. (That's a good thing.) Honoring the Settlement Agreement will help you to rebuild your Credit, and increase your Credit Score.

If you and the Bank/Plaintiff/Collection Agency sign a *Stipulation for Settlement and Deferred Entry of Judgment*, the Stipulation for Settlement and Deferred Entry of Judgment becomes a New Contract – that will *displace* the Cardmember Agreement. The Limited Civil Case that the Bank/Plaintiff/Collection Agency filed against you will be settled and *no* court proceedings will follow if you keep your side of the bargain.

Born in [Portsmouth](#), England, Charles Dickens was forced to leave school to work in a factory when his father was thrown into debtors' prison. Although he had little formal education, his early impoverishment drove him to succeed. Over his career he edited a weekly journal for 20 years, wrote 15 novels, five novellas and hundreds of short stories and non-fiction articles, lectured and performed extensively, was an indefatigable letter writer, and campaigned vigorously for children's rights, education, and other social reforms. See http://en.wikipedia.org/wiki/Charles_Dickens

Debtor: Preparing for Settlement – Using Form WG-007

Form WG-007 <http://www.courts.ca.gov/documents/wg007.pdf> is a common form that is freely-available on the Internet – that is used by Debtors to support a Claim of Exemption as to all or a part of their earnings – in defense of a Garnishment *after judgment*. It is a good worksheet: Most Collectors in California – and all of their attorneys – are *or should be* familiar with it.

1. **Note the instruction at the top of the page** and discuss this form with your spouse:

→ **If you are married, this form must be signed by your spouse: unless you and your spouse are living separate and apart. If this form is not signed by your spouse, check the applicable box on the reverse in item 9.**

- a. **Note to Spouse:** The Form requires *you* to state your "monthly take-home income & source" in Item 1a. Fill-in the requested information on line 1.a. These disclosures are required because your earnings are a part of the household budget. *Signing this form does not make you a defendant in the Collector's lawsuit.*

b. Name the other person(s) who depend on you for support, his or her or their relationship(s) to you, and his or her or their monthly take-home income(s) and source(s) on lines 1.b., 1.c., etc.

→ Income from Working, income from Social Security, income from any public benefit source, income from any private source (*except-for Special Needs Trust Payments to a Special-Needs Trust Beneficiary*), and SSI benefits paid to a Disabled Child would all be included in completing items 1.b., 1.c., etc. (The residence of an SSI beneficiary in the Household shows Hardship - and can explain the credit card debt.)

2. Describe My monthly income:

Item 2.a. is gross income from **employment**: meaning, before any deductions are withheld –

Item 2.b. asks you for the withholdings that are withheld by your employer

Item 2.c. is your take-home pay: 2.b. *minus* 2.a.

Item 2.d. includes all items that you have a right to receive, and that you do receive, each month. Examples include Child Support Payments **actually received**, Disability Payments of Any Kind, In-Home Supportive Services Payments, Pension Benefits, Social Security Retirement Payments, Unemployment Insurance, Worker’s Compensation Benefits – **and Your Net Income from Self Employment, for the Self-Employed.**

Item 2.e. is 2.c. *plus* 2.d

3. Next: Describe the Property that you, your spouse, and your other dependents own

→ Supply the requested information in the spaces that follow. *Include, for example, the \$10,000 that your daughter inherited from her grandmother in one of the spaces following your checking account information in Item 3.a.* The Collector *cannot reach* any of the money or any of the other property *that truly belongs* to your ward, if you are a guardian, or to your child, if you are a parent, or to your parent, if you are his or her representative payee. If, for example, you are a custodian under the Uniform Transfers to Minors Act, and the minor is your dependent, the **account** would be included in the information you supply for **Item 3**. The **fact** that it is owned by your ward or child, and that you are a custodian under the Uniform Transfers to Minors Act, would be stated in **Item 6**

→ *You can’t transfer your antique BMW to your 16 year-old son if you’re sued! If you did, you have to list it along with your other car in the spaces following Item 3.c. The “why you are not allowed to” is addressed in the U.F.T.A. Read the sections following Civil Code § 3439.*

http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CIV&division=4.&title=2.&part=2.&chapter=1.&article=

→ *And don’t underestimate your property: Candor comes-across: it gives you strength in negotiating a settlement! Be up front.* Society gives a lot of protections to people of insubstantial means. Read each of the Line Instructions for Item 3 below. **Husband & Wife on Page 1 of this packet** are “**judgment-proof.**” (i.e., they own **nothing that a sheriff can seize or levy upon in satisfaction or part-satisfaction of the debt!**) The biggest asset owned by Husband & Wife is the Mobilehome in which they reside. It receives what’s called a homestead exemption for being “the principal dwelling of a judgment debtor or a judgment debtor’s spouse”. ([Code of Civil Procedure § 704.730](#) explains the Homestead Exemption.) As the footnotes on Page 1 detail: Statutorily-created *exemptions* exist as to *all* of their property. The exemptions from the enforcement of judgments are numerous - and are all stated on two CA Court Forms. Go to forms EJ-155 <http://www.courts.ca.gov/documents/ej155.pdf> and EJ-156 <http://www.courts.ca.gov/documents/ej156.pdf>. Both of these forms are freely-available on the Internet.

Line instructions:

Item 3.a. Cash. Do you keep a **reserve of cash**? If yes: how much? If no, leave blank.

Item 3.b. Accounts. *List banks and amounts*: List the accounts that you are in charge of for-dependents who are other-than your spouse *last*. Remember to *explain* these dependent-accounts in Item 6 (later-on on this Form)

Item 3.c. Cars, Trucks, Boats, RVs, Travel-Trailers, Motorcycles. Ask a **local** dealer how he or she or it would value these items. Markets are local. Exemption-amounts are uniform.

Item 3.d. Real Estate Equity. This is what your house could reasonably sell for *minus the amount owing on the mortgage*. Ask two (2) local realtors who are actively working in real estate sales what price your house could reasonably sell-for; deduct the amount owing on the mortgage, then put the difference on line 3.d.

Item 3.e. Personal Property. **Visit a publicized Estate Sale**. Code of Civil Procedure § 704.040 provides an \$8,000 exemption for personal jewelry, heirlooms and art. Personal property that you own, for-which there exists no ready-market, could be valued according to the price that all of your property would bring at an estate sale that (in a hypothetical situation) your personal representative would hold to dispose of all your estate when you die – and distribute all-cash to your heirs. Code of Civil Procedure § 704.030 provides you with an additional exemption in the amount of \$3,200 for material you purchased to make repairs to, or for the maintenance of, your residence.

Business Property

If you are self-employed: if you do work for which *you keep your own accounts and on which you pay your own expenses* – and for which you are paid *or are expecting to be paid* by others – you have a **business**. If you *own things* that are a part of the business - Code of Civil Procedure § 704.060 provides you with an additional exemption to allow you to carry on the business. Read Form EJ-156 at <http://www.courts.ca.gov/documents/ej156.pdf>.

4. Then: List my monthly expenses for me, my spouse, and my other dependents

For many of the listed items: the amounts you state will be averages.

Item 4.a. Rent or House Payment and Maintenance	+ _____
Item 4.b. Food and Household Supplies	+ _____
Item 4.c. Utilities & Telephone	+ _____
Item 4.d. Clothing	+ _____
Item 4.e. Medical & Dental Payments	+ _____
Item 4.f. Insurance	+ _____
Item 4.g. School, child care	+ _____
Item 4.h. Child, spousal support (prior marriage)	+ _____
Item 4.i. Transportation & automobile expenses (gasoline, maintenance, repairs)	+ _____
Item 4.j. Installment Payments – including car payment	+ _____
Item 4.k. Laundry & cleaning	+ _____

Item 4.l. Entertainment	+ _____
Item 4.m. Other	+ _____
Item 4.n. TOTAL MONTHLY EXPENSES (Total of a through m)	= _____

5. I, my spouse, and my other dependents owe the following debts:

Look at the Column Headings and supply the information requested. Include your debts, your spouse’s debts, and your dependent’s debts.

6. Other Facts Which Support this Claim of Exemption:

This space is included for you to make a personal statement.

→ **Other facts which support this Claim of Exemption (i.e. unusual medical needs, school tuition, expenses for recent family emergencies, or other unusual expenses to help your creditor and the judge understand your budget)(describe):**

Read the statement above and *attach* a statement to this Form if any of these facts applies to you. (Item 6 would be an appropriate place to explain, for example, the \$10,000 that your daughter inherited from her grandmother – which you included in one of the spaces following your checking account information in Item 3.a. (above) – pursuant to the directions for Item 3.a.). Put *Attachment 6* at the top of your statement

7. Existing Withholding Orders

8.

Items 7 and 8 will apply only if you are currently subject to an Earnings Withholding Order (EWO). Check the appropriate boxes and supply the requested information only if you are currently subject to a EWO.

9. Statement regarding Spouse

All persons completing this form: Check the appropriate box

Signature

The Sample Facts stated on Page 2 of this Research Guide are reflected in the sample Form WG-007 that begins on the following page:

SHORT TITLE: OrchardBank v. Tuoseng	LEVYING OFFICER FILE NO.:	COURT CASE NO.: CIV-12345
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FINANCIAL STATEMENT
(Wage Garnishment - Enforcement of Judgment)

NOTE: If you are married, this form must be signed by your spouse unless you and your spouse are living separate and apart. If this form is not signed by your spouse, check the applicable box on the reverse in item 9.

1. The following persons other than myself depend, in whole or in part, on me or my spouse for support:

NAME	AGE	RELATIONSHIP TO ME	MONTHLY TAKE-HOME INCOME & SOURCE
a. Lottie Tuoseng	75	Spouse	948 Social Security
b.			
c.			
d.			
e.			

2. My monthly income

a. My gross monthly pay is: 2a. \$ _____

b. My payroll deductions are (specify **purpose** and amount):

(1) Federal and state withholding, FICA, and SDI..... \$ _____

(2) _____ \$ _____

(3) _____ \$ _____

(4) _____ \$ _____

My TOTAL payroll deduction amount is (add (1) through (4)): b. \$ _____

c. My monthly take-home pay is (a minus b): c. \$ _____ 0

d. Other money I get each month from (specify source):
social security is d. \$ _____ 1,896

e. TOTAL MONTHLY INCOME (c plus d)	e. \$ _____ 1,896
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3. I, my spouse, and my other dependents own the following property:

a. Cash 3a. \$ _____ 0

b. Checking, savings, and credit union accounts (list banks):

(1) Chase xxx678 \$ _____ 500

(2) _____ \$ _____

(3) _____ \$ _____

b. \$ _____ 500

c. Cars, other vehicles, and boat equity (list make, year of each):

(1) 2000 Ford Explorer \$ _____ 1,900

(2) _____ \$ _____

(3) _____ \$ _____

c. \$ _____ 1,900

d. Real estate equity d. \$ _____ 20,000

e. Other personal property (jewelry, furniture, furs, stocks, bonds, etc.) (list separately):
furniture (used)

e. \$ _____ 500

SHORT TITLE: Orchard Bank v. Tuoseng	LEVYING OFFICER FILE NO.:	COURT CASE NO.: CIV-12345
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4. The monthly expenses for me, my spouse, and my other dependants

a. Rent or house payment and maintenance	4.a.	\$	<u>780</u>
b. Food and household supplies	b.	\$	<u>400</u>
c. Utilities and telephone	c.	\$	<u>300</u>
d. Clothing	d.	\$	<u>60</u>
e. Medical and dental payments	e.	\$	<u>150</u>
f. Insurance (life, health, accident, etc.)	f.	\$	<u>800</u>
g. School, child care	g.	\$	<u>0</u>
h. Child, spousal support (prior marriage)	h.	\$	<u>0</u>
i. Transportation & auto expenses (insurance, gas, repair) (list car payments in item 5)	i.	\$	<u>200</u>
j. Installment payments (insert total and itemize below in item 5)	j.	\$	<u> </u>
k. Laundry and cleaning	k.	\$	<u>60</u>
l. Entertainment	l.	\$	<u> </u>
m. Other (specify): Family support for our daughter-in-law and grandchildren			
		m. \$	<u>50</u>

n. TOTAL MONTHLY EXPENSES (add a through m):	n.	\$	<u>2,800</u>
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5. I, my spouse, and my other dependents owe the following debts:

CREDITOR'S NAME	FOR	MO. PAYMENTS	BALANCE OWED	OWED BY (State person's name)
Orchard Bank	Credit Card		3,300	Ni & Lottie

6. Other facts which support this Claim of Exemption (i.e., unusual medical needs, school tuition, expenses for recent family emergencies, or other unusual expenses to help your creditor and the judge understand your budget) (describe):
(If more space is needed, attach page labeled Attachment 6.)

We took out a \$3,000 loan on a no-interest-for-six-months credit card to pay for family expenses when our son was killed in a car accident. Our daughter-in-law was supposed to help us pay it back, but she could not. We tried working with the bank - but the bank wouldn't accept terms that we can afford.

7. An earnings withholding order is now in effect with respect to my earnings or those of my spouse or dependents named in item 1 (specify each person's name and monthly amount):

8. A wage assignment for support is now in effect with respect to my earnings or those of my spouse or dependents named in item 1 (specify each person's name and monthly amount):

9. My spouse has signed below.

- I have no spouse.
- My spouse and I are living separate and apart.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date:

.....Ni Tuoseng.....  _____
(TYPE OR PRINT NAME) (SIGNATURE)

.....Lottie Tuoseng.....  _____
(TYPE OR PRINT NAME OF SPOUSE) (SIGNATURE OF SPOUSE)

Ni and Lottie Tuoseng have a combined income of \$2,884, as against expenses of \$2,800, reflecting a cushion of \$84 a month: without providing for additional contingencies. Pursuant to the terms of their Agreement with Orchard Bank, Ni and Lottie were to pay Orchard Bank \$25 a month for the first six months and 5% of the outstanding principal balance, \$150 being the first-month's payment, each month thereafter until the loan was paid in full. Ni and Lottie timely paid the \$25 payments during the first six months period and continued to pay Orchard Bank \$25 per month for the twelve months that followed, but they were unable to honor the higher minimum payments that the Agreement with Orchard Bank called for, beginning the seventh month. Orchard Bank worked with the Tuosengs for the initial twelve months of their delinquency, owing to the unmet needs of their daughter-in-law and grandchildren that the Tuosengs helped meet and which the Tuosengs expressed to the Bank, repeatedly, together with proof and with their continued expectation that their daughter-in-law would soon be able to repay them her loans: During this period, the Bank assessed the Tuosengs a late fee of \$25 a month for every month that the full payment was missed, which raised the outstanding balance of the account from \$3,000 to \$3,300 at the end of the eighteenth month, when the Bank placed Ni and Lottie in default. The Tuosengs have \$500 in Savings

The Tuosengs' goal is to protect their Savings and to reach a Settlement with the Bank that would allow them to pay the loan off at \$50 per month. The Tuosengs were each served with a [Summons](#) and a [Complaint](#) containing a [Cause of Action](#) by the Shasta County Sheriff on June 1, one month after the Bank had placed them in default. A copy of the Agreement with Orchard Bank was attached. Ni's and Lottie's names and signatures were included. No irregularity in the manner that the Bank conducted its affairs existed. No misunderstandings in the meaning of any of the terms in the Agreement with Orchard Bank existed. The Tuosengs are readers. Ni is fluent in English and Mandarin.⁶ Lottie is a native English speaker.

⁶ Ni Tuoseng (1903-1972) was a real person from an earlier century. Our real patron was 74 years old and was born in China and is a Naturalized US Citizen and was afraid of imprisonment, and shared a common religious heritage with Ni. [The Federal Trade Commission](#) enforces the Fair Debt Collection Practices Act to protect consumers from deceptive, abusive, or unfair debt collection tactics. US Bill collectors by law cannot threaten arrest or imprisonment. Not so in China <http://www.chinaeconomicreview.com/node/26268>

1. \$ _____ on or before _____,
2. \$ _____ per month, on the _____ day of each month,
commencing _____, 20__ until paid in full. Check the applicable box(es):
a. or b., or b. and c., etc. This judgment shall bear Interest at the [legal rate](#) from
and after the date it is signed. b. This judgment reflects a compromise
and settlement of the entire amount of the indebtedness – and shall bear no
interest c. unless the unpaid balance becomes immediately due, as
provided in Paragraph 3 *below*.
3. In the event that any payment is d. not postmarked by the Defendant e.
not received by the Plaintiff f. on or before the date it is due, g. within
____ days of the date it is due, Plaintiff may, without further notice to
Defendants, request immediate entry of this judgment and proceed to
collect h. the payment or payments that are past due i. the entire
balance remaining on the judgment, in any manner authorized by law.

Dated: _____, 20__ _____
Defendant

Dated: _____, 20__ _____
Defendant

Plaintiff

Dated: _____, 20__ _____
By: _____
Counsel for Plaintiff/Authorized Representative

JUDGMENT

Pursuant to stipulation between the parties, judgment is entered for Plaintiff and against Defendant(s) jointly and severally, as provided above.

Dated: _____, 20__ _____
Judge of the Superior Court

5. **If a Settlement is made, get it in writing!** You and the lawyer for the Bank will both need to sign it. After you and the Bank’s lawyer have each signed your Settlement agreement [request a dismissal](#) from the Bank’s lawyer. The Bank’s lawyer should then prepare a [Notice of Entry of Dismissal and Proof of Service](#) and mail a copy to you. This will conclude the case.

6. **Read the Instructions Box on the Summons.** Notice where it says: You have 30 CALENDAR DAYS after this Summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case.

If the lawyer for the Bank filed a [Request for Dismissal](#) followed by a Notice of Entry of Dismissal and Proof of Service in your case, you do not have to follow this step: The case is concluded.

Filing a Response to the Summons:

If the lawyer for the Bank has not filed a [Request for Dismissal](#) followed by a Notice of Entry of Dismissal and Proof of Service in your case – and the 30 CALENDAR DAYS deadline is approaching – you do need to file a written response at the court and have a copy served on the Bank’s lawyer, or risk a [default](#) being entered against you!

A good place to start is the Sacramento County Public Law Library & Civil Self Help Center’s Resource Guide, [Responding to a Breach of Contract Lawsuit](#)

The author estimates that the time needed to complete this packet will depend on individual circumstances. The estimated average time is:

Recordkeeping	2 hours
Reading these Instructions; learning about the law and the forms	2 hours
Preparing the forms	1 hour

This Research Guide and Packet was provided as a public service by John A. Zorbas, a California-licensed attorney. The views and opinions expressed in this Research Guide are entirely those of the author.